A M/S. INDIA METERS LTD.

v.

STATE OF TAMIL NADU

(Civil Appeal Nos. 1032-1033 of 2003)

SEPTEMBER 7, 2010

B

[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

Sales tax – Freight and insurance charges incurred by the dealer – Levy of Sales tax on – Held: Freight and C *insurance charges incurred by the dealer form part of the sale price – Therefore, the same would fall within scope of 'turnover' and sales tax is leviable on it – Tamil Nadu General Sales Tax Act,1959 – ss. 2(n) and (r) – Tamil Nadu General Sales Tax Rules,1959 – r. 6 (c) – Central Sales Tax Act, 1956 .*

D

Words and Phrases – 'Sale' and 'Turnover' – Meaning of, in the context of ss. 2(n) and (r) respectively of Tamil Nadu General Sales Tax Act, 1959.

The appellant-assessee did not include the freight E **charges in its taxable turnover. On inspection it was found that the assessee had collected freight charges and insurance charges separately under the debit notes, but the same had not been shown in the monthly returns. The Assessing authority assessed 50% of that amount,** F **as freight charges, and levied tax on that amount of the freight charged by the assessee forming part of the sale price. Assessee's appeal against the order succeeded. Further appeal by the Revenue was allowed by the Tamil Nadu Special Taxation Tribunal. The assessee filed a writ** G **petition against the order of the Special Tribunal. The High Court upheld the order of the Special Tribunal. Therefore, the instant appeals were filed.**

Dismissing the appeals, the Court

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HELD: 1. The amount of freight and insurance charges incurred by the dealer forms part of the sale price. In the instant case, there was specific contract entered into by and between the parties and according to the relevant clause of the contract, the ownership of the goods would remain with the supplier till they are delivered at the destination station. Thus, the High Court was justified in affirming the judgment of the Special Tribunal. [Paras 41, 42 and 43] [37-E-G]

2. In the instant case, the obligation to pay the freight was clearly on the appellant as there was no sale at all, unless the goods were delivered at the premises of the buyer and in order to so deliver, the assessee necessarily had to incur freight charges. [Para 14] [29-B]

3. It is true that Rule 6(c) of the Tamil Nadu General Sales Tax Rules, 1959 permits deduction of the cost on freight while determining the taxable turnover. However, that provision must be read in the context of definition of "turnover" as also the definition of "sale" in Sections 2(r) and 2(n) respectively of the Tamil Nadu General Sales Tax Act. The turnover of an assessee/dealer would include the aggregate amount for which goods are bought or sold. It is, therefore, the amount for which the goods are bought or sold, which form part of the turnover, and a thing can be said to be sold only when the transaction falls within the scope of the definition of "sale". When the transfer of the property or the goods is to be at the place of the buyer to which the seller is under an obligation to transport the goods, these expenditures incurred by the seller on freight in order to carry the goods from his place of manufacture to the place at which he is required under the contract to deliver, would thus become part of the amount for which the goods are sold by the seller to the buyer and would fall within the scope of "turnover". [Paras 18 and 20] [30-C-D; G-H; 31-A]

A *Dyer Meakin Breweries Ltd.* v. *State of Kerala* **(1970) 3 SCC 253;** *Hindustan Sugar Mills v. State of Rajasthan and Ors.* **(1978) 4 SCC 271;** *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, Indore and Ors.* **(1980) 1 SCC 71;** *Cement Marketing Co. of India Ltd. v.*
B *Commissioner of Commercial Taxes, Karnataka* **1980 (Supp) SCC 373;** *TVL Ramco Cement Distribution Co. (P) Ltd. etc. etc. v. State of Tamil Nadu etc. etc.* **(1993) 1 SCC 192;** *Bihar State Electricity Board and Anr. v. Usha Martin Industries and Anr.* **(1997) 5 SCC 289;** *Black Diamond Beverages and Anr.*
C *v. Commercial Tax Officer, Central Section, Assessment Wingh, Calcutta and Ors.* **(1998) 1 SCC 458;** *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd.* **(2002) 3 SCC 547;** *State of A.P. v. A.P. Paper Mills Ltd.* **(2005) 1 SCC 719; relied on.**

D *Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh* **(1969) 24 STC 487 : (1969) 1 SCWR 560;** *E.I.D. Parry (I) Ltd. v. Assistant Commissioner of Commercial Taxes and Anr.* **(2000) 2 SCC 321, referred to.**

E *Paprika Ltd. and Anr. v. Board of Trade* **(1944) All E.R. 372;** *Love v. Norman Wright (Builders) Ltd.* **(1944) 1 All E.R. 618, referred to.**

Case Law Reference:

F **(1969) 24 STC 487** **Referred to.** **Para 13**

(2000) 2 SCC 321 **Referred to.** **Para 17**

(1944) All E.R. 372 **Referred to.** **Para 23**

G **(1944) 1 All E.R. 618** **Referred to.** **Para 24**

(1970) 3 SCC 253 **Relied on.** **Para 25**

(1978) 4 SCC 271 **Relied on.** **Para 31**

(1980) 1 SCC 71 **Relied on.** **Para 34**

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1980 (Supp) SCC 373 Relied on. Para 35

(1993) 1 SCC 192 Relied on. Para 36

(1997) 5 SCC 289 Relied on. Para 37

(1998) 1 SCC 458 Relied on. Para 38

(2002) 3 SCC 547 Relied on. Para 39

(2005) 1 SCC 719 Relied on. Para 40

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1032-1033 of 2003.

From the Judgment & Order dated 20.11.2001 of the High Court of Judicature at Madras in W.P. No. 21298 of 2001 and T.C. No. 980 of 1993.

K.K. Mani, Ankit Swarup, Mayur R. Shah for the Appellant.

R. Nedumaran, Vimal Dubey for the Respondent.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. These appeals are directed against the judgment and order dated 20.11.2001 passed by the High Court of Judicature at Madras in Writ Petition No. 21298 of 2001 and Tax Case No. 980 of 1993.

2. The appellant is a company incorporated under the provisions of the Companies Act. The appellant manufactures electric meters and supplies it to the Electricity Boards. The appellant is also a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 as well as the Central Sales Tax Act, 1956.

3. Brief facts which are necessary to dispose of these appeals are recapitulated as under:

The Deputy Commercial Tax Officer, Group-VIII, the

A Assessing Officer, Enforcement South passed two separate orders under the Tamil Nadu General Sales Tax Act (hereinafter referred to as TNGST Act) and Central Sales Tax Act (hereinafter referred to as CST Act) on 30.6.1989 holding that the freight and insurance charges were liable to be taxed and
B the same are to be included in the turnover and thus a sum of Rs.7,97,864/- was sought to be included towards the taxable turnover for the assessment year 1986-87 under the TNGST Act taxable at 10% and a sum of Rs.8,48,265/- relating to the same period under the CST Act.

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4. The appellant preferred appeals under TNGST Act as well as CST Act before the Appellate Assistant Commissioner (CT), Kancheepuram, Tamil Nadu. The Appellate Assistant Commissioner remanded the matters to the Appellate Assistant Commissioner for passing fresh orders of assessment.

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5. The appellant had filed two appeals before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madras and the appeals were registered as T.A. Nos. 766 of 1991 and 767 of 1991. Both the appeals were allowed by the said
E Tribunal.

6. The respondent aggrieved by the judgment of the said Appellate Tribunal filed two Revision Petitions before the High Court, which were registered as Tax Cases Nos. 979 of 1993 and 980 of 1993. Consequent upon the constitution of the Tamil
F Nadu Taxation Special Tribunal, under the TNGST Act, the Revision Petitions were referred to the said Tribunal.

7. The Tamil Nadu Taxation Special Tribunal, Chennai, by order dated 19th September, 2000 held that the freight charges
G formed part of sale price and the matter was remanded to the Assessing Authority to work out the actual freight charges. Consequently, the order of the Appellate Assistant Commissioner (CT), Kancheepuram was restored and with the result the Revision Petitions filed by the respondent were
H allowed.

8. The appellant filed a Writ Petition in the High Court of Madras against the order of the Tamil Nadu Taxation Special Tribunal. It was urged in the High Court that the clause in the contract dealing with payment, provided that "payment for 100 per cent value of each consignment together with full excise duty and sales tax will be made in Central Payment, Madras, immediately on receipt of certified copies of acknowledgement of delivery challans from the Chief Store Keepers of the systems concerned, subject to purchase order terms."

9. According to the clause provided in the contract the transfer of title to the goods was to take place only on delivery of goods at the customer's place and that the customer's obligation to pay would arise only after the delivery had been so affected. The contract also provided in the clause dealing with the price that it was payable per unit ex-factory delivery. It provided for the payment of excise duty and statutory levies, in addition to such ex-factory price, as also the fact that the ex-factory price mentioned was exclusive of sales tax.

10. The clause dealing with Sales Tax in clause 3 (b) further provided that "appropriate Sales Tax, if any, found leviable in accordance with the provisions of the relevant Sales Tax Act in force will be paid over and above the price of goods accepted in this order". The clause also provided that Sales Tax and excise duty will be payable only on ex-factory price.

11. The appellant, initially, did not include the freight charges in its taxable turnover. The original assessment was made without taking the freight charges into account for the year 1986-87. There was an inspection on 27.2.1987 in which the inspecting officer had found that the assessee had collected freight charges and insurance charges separately under the debit notes for a total sum of Rs.16,96,530/- but the same had not been shown in the monthly returns. The assessing authority, therefore, determined 50% of that amount of Rs.16,96,530/- as freight charges, after making allowance for the insurance amount and levied tax on that amount of the freight, charged

A by the assessee forming part of the sale price. The assessee's appeal against that order having succeeded, a further appeal was preferred by the Revenue, which came to be allowed by the Tamil Nadu Special Taxation Tribunal. The assessee is now before us, questioning the correctness of that order of the
B Tribunal.

12. The appellant claims that since the contract separates the ex-factory price and the insurance and freight charges, and, under Rule 6(c) of the Tamil Nadu General Sales Tax Rules, the
C freight when specified and charges for by the dealer separately, without including the same in the price of the dealer, the freight charged here could not have been treated as part of the sale price and subjected to tax.

13. Counsel for the appellant relied on a judgment of this
D Court in the case of *Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh* (1969) 24 STC 487 : (1969) 1 SCWR 560. In that decision, rendered by a Bench of three learned Judges of this Court, it was held that the assessee therein had only received as price the amount of the catalogue
E price less the freight charges, which the buyer had paid and, therefore, what was taxable was only the price actually received. That decision was rendered in the background of the facts found which showed that the assessee had despatched the goods to the stockist with the stipulation "date of delivery"
F shall mean the date of railway receipt. The Court having found that the agreement on the part of the buyer/stockist to pay the freight charges and such freight charges been deducted from the catalogue price, the freight charges did not form part of the price of the goods sold. This judgment was explained by a later
G two Judge Bench of this Court in the case of *Hindustan Sugar Mills v. State of Rajasthan & Ors.* (1978) 4 SCC 271. This Court in the later part of the judgment extracted the following statement in the case of *Hyderabad Asbestos Cement Products Ltd.* (supra).

H "..... In our judgment, under the terms of the contract, there

is no obligation on the company to pay the freight; and under the terms of the contract the price received by the company for the sale of goods is the invoice amount less the freight". A

14. In the instant case, the obligation to pay the freight was clearly on the appellant as there was no sale at all, unless the goods were delivered at the premises of the buyer and in order to so deliver, the assessee necessarily had to incur freight charges. B

15. The transfer of title to the goods as provided in clause 10 read with clause 6 of the agreement was to be at the place of delivery in the premises of the buyer. Though the contract mentioned the price of the electric meters as ex-factory price, the delivery was not at the factory gate. The specification of what the price would be at the factory gate, therefore, does not in the context of the term subject to which the sale was agreed to be effected, render it the point or the location at which the sale can be said to have been completed. Had the sale been completed at the factory gate, the expenses incurred thereafter by way of freight charges would then be capable of being regarded as expenditure which was in the nature of a post-sale expenditure and, if paid by the seller, regarded as an amount paid by such seller on behalf of the buyer. C D E

16. Both the aforementioned cases emphasise the fact that expenses incurred by a seller on freight would be part of the sale price, as until the transfer of title to the goods takes place that being the only way made in which sale could have taken place prior to the introduction of clause 29A of Article 366 of the Constitution. F

17. The learned counsel also drew our attention to the decision of this Court in the case of *E.I.D. Parry (I) Ltd. v. Assistant Commissioner of Commercial Taxes & Another* (2000) 2 SCC 321. The question considered therein was the includability of transport subsidy given by the sugar G H

A manufacturer to the cane growers, who, under the terms of the contract were required to supply the sugarcane at the factory. The subsidy so given was held by the Court to be part of the price as that amount had been given by the manufacturer, no doubt, to secure the supply of the goods from the grower/seller.
B The Court in that case did not consider Rule 6(c), framed under the Tamil Nadu General Sales Tax Act, as there was no occasion to refer to the same.

18. It is no doubt true that Rule 6(c) of the Rules permits deduction of the cost on freight while determining the taxable
C turnover. However, that provision must be read in the context of definition of "turnover" as also the definition of "sale" in Sections 2(r) and 2(n) respectively of the Act. "Turnover" is defined in the Act, inter alia, to mean "the aggregate amount for which goods are bought or sold or delivered or supplied or
D otherwise disposed of in any of the ways referred to in clause (n)".

19. "Sale" is defined in Section 2(n), inter alia, as meaning "every transfer of the property in goods (other than by way of a
E mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration". The definition goes on to include a number of other transactions also within that definition of "sale". The turnover of an assessee/dealer would include the
F aggregate amount for which goods are bought or sold. It is, therefore, the amount for which the goods are bought or sold, which form part of the turnover, and a thing can be said to be sold only when the transaction falls within the scope of the definition of "sale".

G 20. When the transfer of the property or the goods is to be at the place of the buyer to which the seller is under an obligation to transport the goods, the expenditure incurred by the seller on freight in order to carry the goods from his place of manufacture to the place at which he is required under the
H contract to deliver, would thus become part of the amount for

which the goods are sold by the seller to the buyer and would fall within the scope of "turnover". A

21. The learned counsel for the State of Tamil Nadu submitted that freight and insurance charges are included in the sale price of the goods. Even if freight and insurance charges are shown separately in the Bill and added to the price of the goods, the character of payment would remain the same. Since freight and insurance charges represent expenditure incurred by the dealer in making the goods available to the purchaser at the place of sale, they would constitute an addition to the cost of the goods to the dealer and would clearly be a component of the price to the purchaser. The amount of freight and insurance charges would be payable by the purchaser not under any statutory or other liability but as part of the consideration for the sale of the goods and would therefore, form part of the sale price. B C D

22. In order to crystallize the legal position, we would like to refer important English and Indian cases.

ENGLISH CASES: E

23. In *Paprika Ltd. & Another v. Board of Trade* (1944) All E.R. 372, the court observed as under:

> "Whenever a sale attracts purchase tax, that tax presumably affects the price which the seller who is liable to pay the tax demands but it does not cease to be the price which the buyer has to pay even the price is expressed as 'x' plus purchase tax." F

24. In this case, the learned Judge also quoted with approval what Goddard, L.J., said in *Love* v. *Norman Wright (Builders) Ltd.* (1944) 1 All E.R. 618:- G

> "Where an article is taxed, whether by purchase tax, customs duty, or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price H

A of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration though made up of cost plus profit plus tax. So if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer. If the buyer B agrees to the price, it is not for him to consider how it is made up or whether the seller has included tax or not."

and summed up the position in the following words :

"So far as the purchaser is concerned, he pays for the C goods what the seller demands, namely, the price even though it may include tax. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the D turnover."

INDIAN CASES:

25. In *Dyer Meakin Breweries Ltd.* v. *State of Kerala* (1970) 3 SCC 253, Chief Justice, Shah (as His Lordship then E was), speaking for the court observed that expenditure incurred for freight and packing and delivery charges prior to the sale and for transporting the goods from the factories to the warehouse of the company is not admissible under Rule 9 (f) of the Kerala General Sales Tax Rules, 1963.

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26. According to the facts of this case, Dyer Meakin Breweries Ltd. is registered as a dealer in "Indian made foreign liquor" under the Kerala General Sales Tax Act, 1963. The company has a place of business at Ernakulam, Kerala. The G liquor sold by the company is manufactured or produced in distilleries or breweries at different places in the State of U.P. and Haryana. Liquor is transported for sale by the company from its breweries and distilleries to its place of business at Ernakulam. It is the practice of the company to maintain a H uniform "ex-factory price" in respect of each brand of liquor sold

at different centers after adding to the ex-factory price the appropriate amount attributable to freight and other charges.

27. In proceedings for assessment of sales tax for 1963-64 the company claimed under Rule 9(f) of the Kerala General Sales Tax Rules, 1963, Rs.59,188.99 as an admissible deduction in respect of charges for "freight and handling charges" collected from the customers, in the computation of the taxable turnover. The Sales Tax Officer rejected the claim, and the order was confirmed by the Appellate Assistant Commissioner and by the Sales Tax Tribunal. A revision application filed before the High Court of Kerala was summarily dismissed. The company has appealed to this Court with special leave.

28. Rule 9 (f) of the Kerala General Sales Tax Rules, 1963, provides:

> "In determining the taxable turnover, the amount specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer....
>
> x x x
>
> (f) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of goods sold;
>
> (i) freight,
>
> (ii) charges for packing and delivery."

29. The company claims that the amount spent by it for freight and for "handling charges" of goods from the factories to the warehouse at Ernakulam is liable to be excluded from the taxable turnover and the taxing authorities and the High Court were in error in refusing to allow the deduction.

30. This court while interpreting Rule 9 (f) of the Kerala General Sales Tax Rules, 1963 observed that it is not intended to exclude from the taxable turnover any component of the price, expenditure, incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale.

31. This court had an occasion to deal with identical issues in the case of *Hindustan Sugar Mills* (supra). P.N. Bhagwati, J. (as His Lordship then was), clearly held that by reason of the provisions of the Control Order which governed the transactions of sale of cement entered into by the assessee with the purchasers in both the appeals before us, the amount of freight formed part of the 'sale price'.

32. In this judgment, the court comprehensively explained the entire principle of law by giving an example in para 8 of the judgment which reads as under:-

"8. Take for example, excise duty payable by a dealer who is a manufacturer. When he sells goods manufactured by him, he always passes on the excise duty to the purchaser. Ordinarily it is not shown as a separate item in the bill, but it is included in the price charged by him. The 'sale price' in such a case could be the entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of the goods. True, the excise duty component of the price would not be an addition to the coffers of the dealer, as it would go to reimburse him in respect of the excise duty already paid by him on the manufacture of the goods. But even so, it would be part of the 'sale price' because it forms a component of the consideration payable by the purchaser to the dealer. It is only as part of the consideration for the sale of the goods that the amount representing excise duty would be payable by the purchaser. There is no other manner of liability, statutory or otherwise, under which the purchases would be liable to pay the amount of excise duty to the dealer.

And, on this reasoning, it would make no difference whether the amount of excise duty is included in the price charged by the dealer or is shown as a separate item in the bill. In either case, it would be part of the 'sale price'. So also, the amount of sales tax payable by a dealer, whether included in the price or added to it as a separate item as is usually the case, forms part of the 'sale price'. It is payable by the purchaser to the dealer as part of the consideration for the sale of the goods and hence falls within the first part of the definition."

33. This judgment has been followed in a large number of subsequent judgments in other cases by this Court.

34. In *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, Indore & Others* (1980) 1 SCC 71 similar question arose for consideration. In this case, while following the case of *Hindustan Sugar Mills* (supra) this court came to the clear conclusion that the amount of freight formed part of the sale price within the meaning of the first part of the definition of the term contained in Section 2 (p) of the Rajasthan Sales Tax Act, 1954.

35. In *Cement Marketing Co. of India Ltd. v. Commissioner of Commercial Taxes, Karnataka* 1980 (Supp) SCC 373 this court observed as under:

"This question is no longer res integra and it stands concluded by a recent decision given by this Court in Hindustan Sugar Mills v. State of Rajasthan (1978) 4 SCC 271. It has been held by this Court in that case that by reason of the provisions of the Cement Control Order which governed the transactions of sale of cement entered into by the assessee with the purchasers, the amount of freight formed part of the "sale price" within the meaning of the first part of the definition of that term in Section 2(h) of the Central Sales Tax Act, 1956 and was includible in the turnover of the assessee. This decision completely covers

A the present case and hence we must hold that the High Court was right in taking the view that the amount of freight formed part of the sale price and was rightly included in the taxable turnover of the appellant."

B 36. In *TVL Ramco Cement Distribution Co. (P) Ltd. etc. etc. v. State of Tamil Nadu etc. etc.* (1993) 1 SCC 192 this court while following the ratio in the case of *Hindustan Sugar Mills* (supra) observed as under:

"(i) that the freight charges should be included in arriving C at the taxable turnover for purposes of Central Sales Tax and Tamil Nadu Sales Tax; and

(ii) that packing charges and excise duty thereon should also be included in arriving at the taxable turnover for D purposes of both Central Sales Tax and Tamil Nadu Sales Tax."

37. In *Bihar State Electricity Board & Another v. Usha Martin Industries & Another* (1997) 5 SCC 289 this court relied on the judgment of this Court in the case of *Hindustan* E *Sugar Mills* (supra) and reiterated legal position that sale price would be the entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of goods.

F 38. In the case of *Black Diamond Beverages and Anr. v. Commercial Tax Officer, Central Section, Assessment Wingh, Calcutta & Others* (1998) 1 SCC 458 this court observed that freight and handling charges would be included in the sale price.

G 39. In *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd.* (2002) 3 SCC 547 this court observed as under:

"... ... ...The sale price realised by the respondent has to be regarded as the entire price inclusive of excise duty H because it is the respondent who has, by necessary

implication, taken on the liability to pay all taxes on the goods sold and has not sought to realise any sum in addition to the price obtained by it from the purchaser. The purchaser was under no obligation to pay any amount in excess of what had already been paid as the price of the scrap." A B

40. In *State of A.P. v. A.P. Paper Mills Ltd.* (2005) 1 SCC 719 the short question arose for consideration was whether the transportation charges and agent's commission paid by the respondent – M/s. A.P. Paper Mills Ltd. to the agent together with the cost of raw material constitute "turnover" under Section 2(s) and is liable to sales tax under Section 6-A of the Andhra Pradesh General Sales Tax Act, 1957. This court relied on *Hindustan Sugar Mills* (supra) and came to the conclusion that the transportation charges and agent's commission would be inclusive in "turnover" under Section 2(s) and is liable to Sales Tax under Section 6(a) of the Andhra Pradesh General Sales Tax Act, 1957. C D

41. When we apply the ratio of the judgments of the English Courts and of our Courts, the conclusion becomes obvious that the amount of freight and insurance charges incurred by the dealer forms part of the sale price. E

42. We may reiterate that in this case, there was specific contract entered into by and between the parties and according to the relevant clause of the contract, the ownership of the goods will remain with the supplier till they are delivered at the destination station. F

43. In view of the clear clause of the contract, no other view is possible. In our considered view, the High Court was totally justified in affirming the judgment of the Tribunal. No interference is called for. These appeals being devoid of any merit are dismissed with costs. G

K.K.T. Appeals dismissed. H